IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/08/2003

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL. APPEAL NO.323 OF 1996

Mangayee @ Eswari .. Appellant

-Vs-

State
rep. by Sub Inspector of Police,
Kolathur Police Station
Salem District
(Crime No.265/94) .. Respondent

This criminal appeal is preferred under Section 374(2) of Cr.P.C. against the judgment dated 18.3.1996 made in S.C.No.292 of 1995 on the file of the learned Principal Sessions Judge, Salem.

!For Appellant : Mr.B.Vasudevan
for Mr.P.Tamizkumaran

^For Respondent : Mr.V.Jaya Prakash Narayan
Govt. Advocate (Crl. Side)

:JUDGMENT

The sole accused/appellant herein, who stood charged and tried for murder of her husband and found guilty under Section 304(1) IPC and sentenced to undergo five years RI has brought forth this appeal.

2. The shorts facts necessary for the disposal of this appeal can be stated as follows:

a) The deceased was the husband of the accused. They were living along with their two children in Chettiyur village. P.W.4 Kala was their daughter. P.Ws.1 Chithan and 2 Duraisamy were neighbours. The deceased suspected that the accused having illegal intimacy with one Shanmugam and they had frequent quarrel on that account. On 13.8.1994 at about 10.00 p.m., when the deceased was sleeping in a cot in front of his house, the accused with M.O.l Suri knife stabbed him on the chest and abdomen and caused instantaneous death. P.W.4 witnessed the occurrence. On hearing the noise of P.W.1, P.W.2 rushed the house of the accused and both of them saw the accused running from the place of the occurrence. They also found the body of the accused lying on the cot in front of the house with a pool of blood. Since there was no conveyance from the village, the next day morning, namely on 14.8.1994 at

about 7.00 a.m., P.W.1 came to the Kolathur Police Station and lodged Ex.P.1 complaint to P.W.10 Ganesan, the Sub Inspector of Police.
b) On the strength of Ex.P.1, P.W.10 Sub Inspector of Police, registered a case in Crime No.265/1994 under Section 302 IPC. Ex.P.9 Express F.I.R was despatched to the concerned Judicial Court, while the copies were sent to higher officials. P.w.11 Subbiah Pillai, Inspector of Police took up investigation on receipt of copy of F.I.R, proceeded to the site of occurrence, made an inspection, and prepared Ex.P.4 Observation mahazar and Ex.P.10 rough sketch in the presence of P.W.7 and another witness. At about 11.30 a.m., he conducted inquest on the body of the deceased in front of P.W.1 to P.W.5 and other witnesses and prepared Ex.P.11 inquest report. He examined P.W.1 to 4 and recorded their statements. P.W.11 recovered MO2 blood stained earth, MO3 Sample earth under Ex.P.5 in front of P.W.7 and other witnesses. P.W.11 also recovered MO6 blood stained bed sheet and MO4 blood stained lime stone power and MO5 sample lime stone powder in front of P.W.7 under Ex.P.6 mahazar and recorded statement of PW.7 and other witnesses.
c) He made a request to P.W.8 Dr. Premavathy attached to Government Hospital, Mettur for conducting post-mortem on the body of the deceased through P.W.9 Perumal Head Constable. On 14.8.1994 at about 4.05 p.m. P.W.8 conducted post-mortem certificate. He issued Ex.P.8 postmortem certificate. He opined that the deceased would appear to have died on injury to the vital organs about 14-18 hours prior to autopsy.
d) On 14.8.1994 at about 4.30 p.m. P.W.11 arrested the accused in front of P.W.5 Velusamy Village Administrative Officer and P.W.6 and recorded the voluntary confessional statement made by the accused in front of the witnesses. The admissible portion of the confessional statement was marked as Ex.P.2. Pursuant to the confessional statement, MO1 Suri knife was recovered under Ex.P.3 in front of P.W.5 and 6 by P.w.11. The Investigating Officer recovered MO8 blood stained saree, MO9 blood stained petticoat and MO10 blood s tained blouse in front of P.W.5 and other witnesses under Ex.P.12 from the accused and the accused was sent for remand. P.w.11 examined P.W.5 and P.W.6 and recorded their statements. On 15.8.1994 P.W.11 sent all the M.Os. to the Court. On 17.8.1994 P.W.11 examined P.W.9 and P.W.10 and other witnesses and recorded their statements. On 21.8.1994, P.w.11 examined P.W.8 Doctor and recorded her statement. On 22.8.1994, P.W.11 made a request to the Judicial Magistrate, Omalur for recording the statements of P.Ws.1,2 and 4 to 6 under Section 164 Cr.P.C. and made a request for sending the MOs for chemical analysis. Ex.P.13 was the chemical analysis report. Ex.P.14 was the serologist report and Ex.P.15 was the chemical analysis report. On completion of the investigation, he laid a charge sheet against the accused on 13.3.1995.
3. In order to prove the charges levelled against the accused, the prosecution examined 11 witnesses and marked 15 documents and 10 Mos. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which she flatly denied as false. No defence witness was examined. On consideration of the rival submissions made and scrutiny of the materials available, the trial court though not found the appellant/ accused guilty under Section 302 IPC, but found the accused guilty under Section 304(1) IPC and sentenced to undergo imprisonment as stated above.
4. Arguing for the appellant the learned counsel made the following

submissions:
The trial court without proper consideration of the evidence available has found the appellant guilty. The prosecution examined PWs.1 to 4 as eyewitnesses. P.Ws.1 and 2 have come to the scene of occurrence only subsequently. P.W.4 was child witness. From the available evidence it would be quite clear that she could not have present at the time of occurrence. P.W.5, according to the prosecution was all along near the dead body throughout night, but the said prosecution witness has not spoken anything about the presence of P.W.4. It is pertinent to point out that the statement of P.W.4 was submitted to the Court by the Police agency only after one and half years. Had she been present and was enquired at the time of inquest as contended by the prosecution, there was no impediment for the police agency to place her statement along with the other materials within a reasonable point of time. Admittedly, according to the prosecution the occurrence has taken place at about 10.00 p.m., but there was no light available at that time. Even in the rough sketch prepared by the Investigating Officer at the time of investigation, it does not reveal that any light was available at that time, and thus, the prosecution made an introduction through the evidence of P.W.2 as if there was a light burning at that time. Insofar the recovery of knife was concerned, the prosecution relied on the confessional statement and the same was not strictly proved as required by law. Apart from that the evidence of the witnesses in that regard as to the recovery of knife was found different from one found in the document of seizure. The trial court has given undue importance to the evidence of P.W.4. On the date of occurrence, the accused was available in her parents house along with children including P.W.4, and thus, the prosecution has not proved its case in any way. But, the trial court found her guilty without proper appreciation of the evidence. Hence, the accused was entitled for an acquittal in the hands of this Court.
5. Strongly opposing all the contentions put forth by the appellant's side, the learned Government Advocate would submit that the appellant before the Court was the wife of the deceased; that they lived together; that they had two children including P.W.4; that at the time of occurrence, there was a quarrel between the deceased and the appellant herein; that P.W.4 has seen the occurrence; that P.Ws.1 and 2 have categorically spoken the fact that they saw the accused running from the place of occurrence; that there was a recovery of knife, which was used by the accused at the time of occurrence, by the police; that the same was recovered pursuant to the confessional statement given by the accused; that at the time of investigation, blood stained earth and sample earth have been recovered; that at the time of postmortem, MO7 underwear worn by the deceased was recovered; that subsequently M.O.8 blood stained saree, M.O.9 blood stained inskirt and M.O.1 0 blood stained jacket were recovered from the accused on her arrest; that they were subjected to chemical analysis, which would clearly indicate that all the blood stained articles found to be the same blood group; that P.Ws.1 and 2 have categorically spoken to the fact that there was light available at that time; that there is nothing to cast doubt on the prosecution case, and thus, the prosecution has proved its case beyond all reasonable doubt. Taking into consideration the sustained provocation, the lower court found the accused guilty under Section 304(1) IPC, though not under Section 302 IPC. Hence, the judgment of the lower court has got to be confirmed.
6. After careful analysis of the entire materials available and

consideration of the rival submissions made, this Court is unable to agree or appreciate any one of the contentions put forth by the appellant's side.

7. The gist of the prosecution case as seen above was that due to suspicion over the fidelity of his wife, the deceased used to quarrel with her; that provoked wife/appellant herein stabbed him with M.O.1 Suri knife on his chest and abdomen and caused instantaneous death and that the same was witnessed by P.Ws.1, 2 and 4. The motive of occurrence is that provoked over the husband's quarrel on the suspicion of her fidelity, the appellant has stabbed the deceased at the time of occurrence, which has been clearly spoken to by P.W.3, the brother of the deceased. P.Ws.1 and 2, the neighbours of the deceased, have also clearly spoken about the said fact. P.W.4 though a child, has also spoken to the fact that there was a quarrel between her parents on the day of occurrence. Hence, it can be well stated that the prosecution has proved the motive aspect. Insofar as the act of the accused in attacking the deceased with knife was concerned, the lower court has much relied on P.W.4 along with the evidence of P.Ws.1 and 2. It is true that the child was aged about 6 years, but she has stated in the cross examination that she was sleeping and after hearing the noise, she woke up and found her mother was going out from the house. It is not in dispute that the deceased was attacked and succumbed to injuries in his residence. Sufficient evidence was available to show that at the time of occurrence, the appellant was available with her husband along with their children in their house. P.W.4's evidence was available to the prosecution to the extent that all of them were sleeping at the time of occurrence and on hearing noise, P.W.4 woke up and found her mother running out. P.Ws.1 and 2 have categorically spoken to the fact that they saw the accused/appellant running from the house at the time of occurrence and found the deceased was lying on a pool of blood.

8. The contention of the appellant's side that there was no light and it was subsequently introduced cannot be accepted for the simple reason that even in the observation mahazar prepared by the Investigating Officer, a light post was actually mentioned. P.W.2 has categorically stated that the light was burning at that time and he saw the accused running from that place. Thus, the prosecution has brought forth the above evidence to show that it was the accused who attacked the deceased with knife at the time of occurrence. Added circumstance in this case is the medical evidence and the same has fully corroborated the ocular testimony. It is pertinent to point out that the accused/appellant was arrested at 4.30 p.m. on 14.8.1995 by the Investigating Officer. Pursuant to the confessional statement given by the accused, MO1 knife was recovered. The appellant's side is able to show certain minor discrepancies in the evidence pertaining to the confessional statement and the recovery of M.Os. The court is of the considered view that much weight cannot be attached to the same. The evidence adduced by the prosecution as to the recovery of weapon used by the appellant at the time of occurrence pursuant to the confessional statement given by her voluntarily has stood as a good piece of evidence as to the nexus between the appellant and the crime in question. Apart from the above, M.O.7 underwear worn by the deceased at the time of occurrence was recovered at the time of post-mortem. M.O.8 blood stained saree, M.O.9 blood stained inskirt and M.O.10 blood stained jacket were also recovered from the accused at the time of her arrest. The above items were subjected to chemical analysis and reports were obtained. From the report, it would clearly reveal that MO7 worn by the deceased and MO8 to 10 worn by the

accused contained blood of the same group. Thus, this part of the evidence has stood a corroborative piece of evident to the prosecution case. In view of the direct evidence fully corroborated by the medical evidence coupled with the recovery of M.O.1 pursuant to the confessional statement given by the accused, the prosecution has brought home the guilt of the accused. Hence, the contentions put forth by the appellant's side do not carry any merit.

9. Coming to the question of sentence, the lower court has found the accused guilty under Section 304(1) IPC taking into consideration the sustained provocation. Hence, the act of the accused/appellant was neither premeditated nor intentional one. Taking into consideration of the fact and circumstances of the case and in particular the accused has acted in a sustained provocation as to the quarrel of her husband with regard to her fidelity, this Court is of the considered view that the case would fall under Section 304(2) IPC and the punishment of four years RI would meet the ends of justice. Hence, the conviction of the lower court is modified from Section 304(1) IPC to 304(2) IPC. The conviction and sentence awarded by the lower court under Section 304(1) IPC is set aside. The accused/appellant herein is convicted under Section 304(2) IPC and sentenced to undergo four years RI. With the above modification, the criminal appeal is dismissed. The Sessions Judge shall take steps to commit the accused to prison, if she is on bail, to undergo the remaining period of sentence. The sentence already undergone by the accused is ordered to be set off.

Index : Yes
Internet : Yes
vvk
To
1. The Judicial Magistrate I, Mettur
2. The Judicial Magistrate I, Mettur
through the Chief Judicial Magistrate, Salem
3. The Principal Sessions Judge, Salem
4. The Superintendent, Spl. Prison for Women, Vellore
5. The Public Prosecutor, High Court, Madras
6. The Dy. Inspector General of Police, Chennai-4
7. Mr.V.Jaya Prakash Narayan, Govt. Advocate (Crl. Side)
High Court, Chennai
8. The Inspector of Police, Kolathur Police Station,
Salem District

□